


# ***CR 2023/58 - Vanguard retail funds - exchange of units for units in Vanguard wholesale funds***

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Status: **legally binding**

## Class Ruling

# Vanguard retail funds – exchange of units for units in Vanguard wholesale funds

### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for holders of units in the Vanguard Retail Funds (each a Retail Fund) (listed in Column A of Tables 1 and 2 of this Ruling) who exchanged their units in a Retail Fund for units in the corresponding Vanguard Wholesale Fund (together the Wholesale Funds) (listed in Column B of Tables 1 and 2 of this Ruling).

2. Details of the unit exchange scheme are set out in paragraphs 22 to 44 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

**Note:** By issuing this Ruling, the ATO is not endorsing the unit exchange scheme. Potential participants must form their own view about the unit exchange scheme.

### **Who this Ruling applies to**

4. This Ruling applies to you if, just before the date on which the unit exchange scheme is implemented (Scheme Implementation Date), you:

- held units in one, or more, of the Retail Funds (listed in Column A of Tables 1 and 2 of this Ruling)
- held your units on capital account for income tax purposes – that is, you did not hold your units as revenue assets (as defined in section 977-50) or as trading stock (as defined in subsection 995-1(1)), and

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- were a resident of Australia (as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*)

and on the Scheme Implementation Date:

- you exchanged your units in the Retail Fund for units in the corresponding Wholesale Fund (listed in Column B of Tables 1 and 2 of this Ruling).

5. The Retail Funds and corresponding Wholesale Funds are as follows:

*Table 1: Retail Funds and corresponding Wholesale Funds - single sector funds*

| <b>Column A – Retail Fund</b>   | <b>Column B – corresponding Wholesale Fund</b>                        |
|---|---|
| Vanguard Index Australian Shares Fund (ARSN 090 995 770)              | Vanguard Australian Shares Index Fund (ARSN 090 939 718)              |
| Vanguard High Yield Australian Shares Fund (ARSN 109 638 379)         | Vanguard Australian Shares High Yield Fund (ARSN 091 751 807)         |
| Vanguard Index Australian Property Securities Fund (ARSN 090 995 494) | Vanguard Australian Property Securities Index Fund (ARSN 090 939 549) |
| Vanguard Index International Shares Fund (ARSN 090 995 583)           | Vanguard International Shares Index Fund (ARSN 090 939 610)           |
| Vanguard Index Hedged International Shares Fund (ARSN 095 375 894)    | Vanguard International Shares Index Fund (Hedged) (ARSN 093 254 909)  |
| Vanguard Investor Short Term Fixed Interest Fund (ARSN 090 995 887)   | Vanguard Short Term Fixed Interest Fund (ARSN 090 940 060)            |

*Table 2: Retail Funds and corresponding Wholesale Funds - diversified funds*

| <b>Column A – Retail Fund</b>  | <b>Column B – corresponding Wholesale Fund</b>           |
|--|--|
| Vanguard LifeStrategy Conservative Fund (ARSN 090 996 044)           | Vanguard Conservative Index Fund (ARSN 101 565 351)      |
| Vanguard LifeStrategy Balanced Fund (ARSN 103 186 607)               | Vanguard Balanced Index Fund (ARSN 101 565 431)          |
| Vanguard LifeStrategy Growth Fund (ARSN 090 996 099)                 | Vanguard Growth Index Fund (ARSN 101 565 520)            |
| Vanguard LifeStrategy High Growth Fund (ARSN 090 995 967)            | Vanguard High Growth Index Fund (ARSN 101 565 637)       |
| Vanguard Index Diversified Bond Fund (ARSN 090 995 841) <sup>1</sup> | Vanguard Diversified Bond Index Fund (ARSN 147 937 728). |

6. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 22 to 44 of this Ruling.

**Note:** Division 230 will not apply to individuals unless they have made an election for it to apply.

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<sup>1</sup> The Vanguard Index Diversified Bond Fund, and its corresponding Wholesale Fund, the Vanguard Diversified Bond Index Fund are listed as 'single sector' funds in various materials prepared by Vanguard on the basis that they provide exposure to assets in a single sector. However, they are described as 'diversified' funds in this Ruling on the basis that their structure is consistent with the description given to 'diversified' funds in paragraph 30 of this Ruling.

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### **When this Ruling applies**

7. This Ruling applies to the income year in which the unit exchange transaction occurred, being the year ended 30 June 2024.

## **Ruling**

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### **CGT event A1 happened on the disposal of your Vanguard Retail Fund units**

8. CGT event A1 happened when you disposed of your units in the Retail Fund to Vanguard Investments Australia Ltd as responsible entity of the corresponding Wholesale Fund (subsection 104-10(1)).

9. The time of CGT event A1 was 5 October 2023 (the Scheme Implementation Date) (paragraph 104-10(3)(b)).

10. You will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your units in the Retail Fund exceed their cost base. You will make a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your units are less than their reduced cost base (subsection 104-10(4)).

11. The capital proceeds from CGT event A1 happening are equal to the market value of the corresponding Wholesale Fund units you received in exchange (paragraph 116-20(1)(b)).

### **Availability of scrip for scrip rollover**

12. If you make a capital gain from the disposal of your units in the Retail Fund, you may choose to obtain scrip for scrip rollover for that gain (section 124-781).

### **Consequences if you choose scrip for scrip rollover**

#### ***Capital gain is disregarded on disposal of your Vanguard Retail Fund units***

13. If you choose scrip for scrip rollover you will be able to disregard any capital gain from CGT event A1 happening in respect of the disposal of your units in the Retail Fund for replacement Wholesale Fund units (subsection 124-785(1)).

14. Scrip for scrip rollover cannot be chosen if any capital gain you might subsequently make from the replacement Wholesale Fund units would be disregarded, except because of a rollover – for example, you hold your replacement Wholesale Fund units as trading stock (paragraph 124-795(2)(a)).

#### ***Cost base and reduced cost base of corresponding Vanguard Wholesale Fund units***

15. If you choose scrip for scrip rollover, the first element of the cost base and reduced cost base of each replacement Wholesale Fund unit you received is worked out by reasonably attributing to it the cost base and reduced cost base of the Retail Fund unit for which it was exchanged (subsections 124-785(2) and (4)).

16. You can calculate the first element of the cost base and reduced cost base of each replacement Wholesale Fund unit by dividing the aggregate cost bases of your Retail Fund units by the number of replacement Wholesale Fund units you received.

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**Acquisition date of corresponding Vanguard Wholesale Fund units**

17. If you choose scrip for scrip rollover, the date of acquisition of the replacement Wholesale Fund units is the date you acquired the corresponding units in the Retail Fund (table item 8C of section 109-55 and table item 2 of subsection 115-30(1)).

**Consequences if you do not choose or cannot choose scrip for scrip rollover****Capital gain is not disregarded on disposal of your Vanguard Retail Fund units**

18. If you do not, or cannot, choose scrip for scrip rollover, you must account for any capital gain or capital loss from CGT event A1 happening on the disposal of your Retail Fund units in working out your net capital gain or net capital loss for the income year in which CGT event A1 happens (sections 102-5 and 102-10).

19. If you make a capital gain and do not, or cannot, choose scrip for scrip rollover, you can treat the capital gain as a discount capital gain if the conditions in Subdivision 115-A are met. In particular, the Retail Fund units you disposed of must have been acquired at least 12 months before the Scheme Implementation Date, the date on which CGT event A1 occurred.

**Cost base and reduced cost base of corresponding Vanguard Wholesale Fund units**

20. If you do not, or cannot, choose scrip for scrip rollover, the first element of the cost base and reduced cost base of your replacement Wholesale Fund units is equal to the market value of the Retail Fund units you exchanged. The market value of your Retail Fund units is worked out at the time you acquired the replacement units in the corresponding Wholesale Fund (paragraph 110-25(2)(b) and subsection 110-55(2)).

**Acquisition date of corresponding Vanguard Wholesale Fund units**

21. If you do not, or cannot, choose scrip for scrip rollover for the CGT event A1 gain arising from the disposal of your Retail Fund units, the time of acquisition of your replacement units in the (corresponding) Wholesale Fund is the date the units were issued to you by the Wholesale Fund (table item 3 of section 109-10).

**Scheme**

22. The following description of the scheme is based on information provided by the applicant. If the scheme was not carried out as described, this Ruling cannot be relied upon.

**Background**

23. Vanguard Investments Australia Ltd is the Australian subsidiary of the Vanguard Group, Inc., one of the world's largest global investment management companies.

24. Vanguard Investments Australia Ltd was established in 1996 and has been serving financial advisers, retail clients and institutional clients in Australia for over 25 years with Vanguard Group, Inc. (as of 31 March 2023) having over \$11.4 trillion in assets under management globally.

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25. The Retail Funds (listed in Column A of Tables 1 and 2 of this Ruling) are a legacy offering originally made by Vanguard to the retail market back in 1998 with each Retail Fund meeting its investment strategy by investing (acquiring and holding units) in one or more of the Vanguard Wholesale Funds (as discussed further in paragraph 28 to 33 of this Ruling). Since 1 October 2020, the Retail Funds have been closed to new investors.

26. As the Retail Funds are closed to new investors, there is a risk that over time they may become too small to operate and may eventually result in the fees for each of the Retail Funds being increased and each of the Retail Funds (if in member's best interests) being terminated.

27. The unit exchange scheme is to facilitate the transition of retail investors from the Retail Funds to the corresponding Wholesale Funds.

### ***The Vanguard Retail Funds***

28. All of the 11 Retail Funds:

- are Australian unit trusts and Chapter 5C of *Corporations Act 2001* registered managed investment schemes of which Vanguard Investments Australia Ltd is the responsible entity
- have only one class of unit on issue, the retail class, that are subscribed for (issued) and redeemed at the price set out in the fund constitution
- have more than 300 members (unitholders), with the exception of the Vanguard Investor Short Term Fixed Interest Fund (that has less than 300 members), and
- are managed investment trusts as defined in section 275-10 and attribution managed investment trusts pursuant to paragraph 276-10(1)(e) irrevocable choice made by Vanguard Investments Australia Ltd as responsible entity for each Vanguard Retail Fund.

29. Six of the Retail Funds (listed in Table 1 of this Ruling) are what are described as 'single sector' funds. These Retail Funds meet their investment strategy by holding units in the corresponding Wholesale Fund, which is a single sector fund that invests directly into the relevant class of asset or securities. The units in the corresponding Wholesale Fund are the only assets (apart from a small amount of cash) held by the single sector Retail Fund.

30. Five of the Retail Funds (listed in Table 2 of this Ruling) are what are described as 'diversified' funds. These Retail Funds each meet their investment strategy by holding units in a number of Vanguard Wholesale Funds that are single sector funds (that includes Wholesale Funds not listed in Column B of Table 2 of this Ruling). The mix of units held is determined by the particular investment strategy of the diversified Retail Fund, noting this mix is the same as that of the corresponding diversified Wholesale Fund.

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### **The Vanguard Wholesale Funds**

31. All of the 11 corresponding Wholesale Funds:
- are Australian unit trusts and Chapter 5C of *Corporations Act 2001* registered managed investment schemes of which Vanguard Investments Australia Ltd is the responsible entity
  - have one or more classes of units on issue, which can include a wholesale class and an exchange traded fund class, that are each subscribed for (issued) and redeemed at the price set out in the fund constitution
  - have more than 300 members (unitholders), with the exception of the Vanguard Short Term Fixed Interest Fund (that has less than 300 members), and
  - are managed investment trusts as defined in section 275-10 and attribution managed investment trusts pursuant to the paragraph 276-10(1)(e) irrevocable choice made by Vanguard Investments Australia Ltd as responsible entity for each Vanguard Wholesale Fund.
32. Six of the Wholesale Funds are single sector funds with each investing directly into the relevant class of asset or security.
33. Five of the Wholesale Funds are diversified funds with each meeting its investment strategy by holding units in a number of other Vanguard Wholesale Funds that are single sector funds (that includes Wholesale Funds not listed in Column B of Table 1 of this Ruling). The mix of units held is determined by the particular investment strategy of the diversified Wholesale Fund, noting this mix is the same as that of the corresponding diversified Retail Fund.

### **The unit exchange scheme**

34. Prior to the implementation of the unit exchange scheme, the constitution of each Retail Fund was amended to appoint Vanguard Investments Australia Ltd as the attorney and agent of all the unitholders (of each Retail Fund) and give it the power to do all things necessary for the purpose of implementing the scheme. This included the creation of a new 'special investor' class of units (with no voting or income distribution rights) which were issued to a third party (special investor) for nominal consideration. This step was undertaken in advance of the implementation of the unit exchange scheme to prevent fund merger issues from arising as a result of the unit exchange. The special investor did not participate in the unit exchange transaction.
35. The amendments to the constitution of each Retail Fund were approved by the unitholders of the fund by special resolution.
36. The unit exchange scheme was then approved by ordinary resolution by the unitholders of each Retail Fund.
37. Under the unit exchange scheme, each Retail Fund unitholder (other than the special investor) subscribed for (wholesale class) units in the corresponding Wholesale Fund (equal to the market value of the units held in the Retail Fund) and paid for this by transferring their units in the Retail Fund to the corresponding Wholesale Fund.
38. The number of (wholesale class) units each Retail Fund unitholder subscribed for in the corresponding Wholesale Fund was determined by reference to the value of each Retail Fund unit and each Wholesale Fund unit on the Scheme Implementation Date.

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**Ineligible (foreign resident and small balance) unitholders**

39. Retail Fund unitholders who are foreign residents (address is shown as a place outside of Australia) and also those who are small balance unitholders (received less than one unit in the corresponding Wholesale Fund under the exchange) had their replacement Wholesale Fund units issued to a (redemption) nominee on their behalf. Just after completion, the (redemption) nominee requested the redemption of the replacement Wholesale Fund units (for cash) and the proceeds of this redemption was remitted to each ineligible (foreign resident and small balance) unitholder.

**Completion**

40. On completion of the transaction, the Retail Funds were, aside from the special investor class units, wholly-owned by their corresponding Wholesale Fund.

**Other matters**

41. None of the Retail Fund unitholders, including the unitholders of the Vanguard Investor Short Term Fixed Interest Fund (that has less than 300 members), were significant stakeholders or common stakeholders (as defined in section 124-783) for the arrangement.

42. No individual, nor up to 20 individuals, owned between them (directly or indirectly) for their own benefit, units in the Retail Fund or Wholesale Fund carrying at least 75% of the relevant trust's income capital or voting rights for the purposes of section 124-810.

43. Vanguard Investments Australia Ltd as the responsible entity for each of the corresponding Wholesale Funds did not make a choice under subsection 124-795(4).

44. The units in the (relevant) corresponding Wholesale Fund subscribed for by each Retail Fund unitholder (investor), are, under the unit exchange scheme, at the direction of the investor, issued to and held by Vanguard Investments Australia Ltd (as registered unitholder) on behalf of the investor through Vanguard Personal Investor. Under the terms of the deed poll for Vanguard Personal Investor, Vanguard Investments Australia Ltd holds these units as bare trustee on behalf of the investor, who is said to be absolutely entitled to the underlying asset (units in the Wholesale Fund) as against the trustee for the purposes of section 106-50.

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**Commissioner of Taxation**

1 November 2023

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## **Appendix – Explanation**

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❶ ***This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

45. Scrip for scrip rollover under Subdivision 124-M enables a unitholder to disregard capital gain from the disposal of a unit if the unitholder receives a replacement unit in exchange. It also provides special rules for calculating the cost base and reduced cost base of the replacement unit.

46. Subdivision 124-M contains a number of conditions for, and exceptions to, a unitholder being able to choose scrip for scrip rollover. The main requirements that are relevant to the scheme that is the subject of this Ruling are:

- units in one trust are exchanged for units in another trust
- entities (exchanging unitholders) have fixed entitlements to all of the income and capital of the original trust and the acquiring (replacement) trust
- the exchange is in consequence of an arrangement that satisfies subsection 124-781(2) or (2A)
- the conditions for the rollover under subsection 124-781(3) are satisfied
- further conditions in subsection 124-781(4), if applicable, are satisfied, and
- exceptions for the rollover in section 124-795 are not applicable.

47. The scheme that is the subject of this Ruling satisfies the requirements for rollover under Subdivision 124-M.

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## References

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### *Legislative references:*

- ITAA 1936 6(1)
- ITAA 1997 102-5
- ITAA 1997 102-10
- ITAA 1997 104-10(1)
- ITAA 1997 104-10(3)(b)
- ITAA 1997 104-10(4)
- ITAA 1997 106-50
- ITAA 1997 109-10
- ITAA 1997 109-55
- ITAA 1997 110-25(2)(b)
- ITAA 1997 110-55(2)
- ITAA 1997 Subdiv 115-A
- ITAA 1997 115-30(1)
- ITAA 1997 116-20(1)(b)
- ITAA 1997 Subdiv 124-M
- ITAA 1997 124-781
- ITAA 1997 124-781(2)
- ITAA 1997 124-781(2A)
- ITAA 1997 124-781(3)
- ITAA 1997 124-781(4)
- ITAA 1997 124-783
- ITAA 1997 124-785(1)
- ITAA 1997 124-785(2)
- ITAA 1997 124-785(4)
- ITAA 1997 124-795
- ITAA 1997 124-795(2)(a)
- ITAA 1997 124-795(4)
- ITAA 1997 124-810
- ITAA 1997 275-10
- ITAA 1997 276-10(1)(e)
- ITAA 1997 Div 230
- ITAA 1997 977-50
- ITAA 1997 995-1(1)
- Corporations Act 2001 Ch 5C

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### ATO references

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